



Dr. Beverly R. Newman (“Newman”) appeals from the Tippecanoe Superior Court’s dismissal of her petition for judicial review of the denial of her petition before the Indiana Pesticide Review Board (“IPRB”). She raises one issue: whether the trial court improperly granted IPRB’s motion to dismiss. We affirm.

### **Facts and Procedural History**

On December 17, 2004, Gold Seal Termite and Pest Control (“Gold Seal”) applied a termiticide/insecticide at B’nai Torah Synagogue in Indianapolis. When Newman entered the synagogue for services the following day, she immediately experienced trouble breathing and eye irritation.

On April 6, 2005, Newman filed a “Pesticide Exposure Incident Report” with the Office of the Indiana State Chemist (“State Chemist”). Appellant’s App. pp. 32-34. On June 13, 2005, the State Chemist issued a case summary of its investigation and air testing at the synagogue, which concluded that “[n]o violation of the Indiana Pesticide Use and Application law could be documented at this time.” Id. p. 72.

Newman then submitted a “Petition to Set Aside Action of the State Chemist” to IPRB, citing Indiana Code section 15-3-3.6-15, which provides that “[a]ny person aggrieved by any action of the board may obtain a review under IC 4-21.5-5.” Ind. Code § 15-3-3.6-15(d) (1997). Newman contended that the State Chemist’s investigation was “improper and deficient” and that the case summary was “incomplete, biased, and distorted.” Appellant’s App. p. 64.

The State Chemist responded with a motion to deny Newman’s petition on the grounds that she was not a person aggrieved by any agency action and thus lacked

standing to seek administrative review. IPRB agreed and entered a final order dismissing Newman's petition to set aside the State Chemist's decision not to pursue disciplinary action against Gold Seal. On March 28, 2006, Newman filed a petition for judicial review of IPRB's dismissal of her petition. IPRB filed a motion to dismiss alleging that Newman lacked standing and was not a party to whom agency action was directed. The trial court heard argument on IPRB's motion and on August 3, 2006, dismissed Newman's petition for judicial review. Newman now appeals.

### **Discussion and Decision**

Judicial review of administrative decisions is available only to those who have standing, who have exhausted administrative remedies, who have timely pursued review, and who have met any other requirements established by law. Ind. Ass'n of Beverage Retailers, Inc. v. Ind. Alcohol & Tobacco Com'n, 836 N.E.2d 255, 257 (Ind. 2005) (citing Peabody Coal Co. v. Ind. Dep't of Natural Res., 664 N.E.2d 1171, 1172 n. 2 (Ind. 1996) (citing Ind. Code § 4-21.5-5-2(b))).

Newman sought judicial review of the IPRB's dismissal order pursuant to the Administrative Order and Procedures Act ("AOPA"), Indiana Code article 4-21.5 (2004). AOPA explicitly enumerates five categories of persons who "have standing to obtain judicial review of an agency action." Ind. Code § 4-21.5-5-3(a) (2002 & Supp. 2006). With exceptions not relevant here, these ultimately require that the person be "aggrieved or adversely affected" or be a subject of the order or a party to the agency proceedings. Id. See also Ind. Ass'n of Beverage Retailers, 836 N.E.2d at 257.<sup>1</sup>

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<sup>1</sup> Likewise, under section 3-7 of AOPA a person must be "aggrieved or adversely affected" in order to seek administrative review. Thus, the standing requirement for judicial review is essentially congruent

Citing to Indiana Code section 15-3-3.6-15(d) and AOPA, Newman argues that she has standing to seek judicial review both as a “person aggrieved by any action of the board” and as a party to the agency proceedings. In order to qualify as an “aggrieved person” for purposes of judicial review, a person must have suffered “harm to a legal interest, be it pecuniary, property or personal interest.” Ind. Ass’n of Beverage Retailers, 836 N.E.2d at 259 (citing Huffman v. Office of Env’tl. Adjudication, 811 N.E.2d 806, 810 (Ind. 2004)). The concept of “aggrieved” “is more than a feeling of concern or disagreement with a policy, rather, it is a personalized harm.” Huffman, 811 N.E.2d at 812. Persons who do not meet this standard are not entitled to “push the process to the next level by seeking administrative or judicial review.” Ind. Ass’n of Beverage Retailers, 836 N.E.2d at 259.

As IPRB points out, the State Chemist’s action was not directed against Newman. Newman filed an incident report, alerting the State Chemist to a potential violation of the pesticide use and application statutes. The ensuing investigation and any potential sanctions by IPRB were directed at Gold Seal as a state-licensed pesticide applicator. Thus, Newman could not be “aggrieved” by IPRB’s action, or as appears to be the case here, inaction on the State Chemist’s investigation.

Nor is Newman a party to the agency proceedings. AOPA provides that a “party” to a administrative proceeding is “(1) a person to whom the agency action is specifically directed; or (2) a person expressly designated in the record of the proceedings a party to the proceedings.” Ind. Code § 4-21.5-1-10. As addressed above, Newman is not a

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with the “aggrieved or adversely affected” requirement for administrative review. Ind. Ass’n of Beverage Retailers, 836 N.E.2d at 259.

person to whom agency action was specifically directed. Newman argues that she is a party to the agency proceedings because her name appears in the agency record as the petitioner. Newman's name appears listed as petitioner because she drafted her various petitions to IPRB that way, and IPRB responded to her filings. Several of the documents Newman points to in support of her argument that she is party to the proceeding specifically find that she lacks standing. See e.g. Appellant's App. pp. 175-81.<sup>2</sup>

The trial court properly dismissed Newman's petition for judicial review.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.

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<sup>2</sup> Likewise, Newman also argues that in its motion to dismiss, IPRB impermissibly contested "facts" alleged in her petition for judicial review, namely that:

- (a) Dr. Newman has standing to obtain judicial review of the instant agency action because she is person to whom the agency action is specifically directed and she is a person who was a party to the agency proceedings that led to the agency action. [ ]
- (b) Dr. Newman has exhausted her administrative remedies within the Indiana Pesticide Review Board.

Appellant's App. p. 183. However, labeling these assertions as "facts" does not make them so.